

WEST VIRGINIA INFORMATIONAL LETTER

NO. 118

MAY, 2000

TO: All Insurance Companies Licensed to Do Business in the State of West Virginia,
Insurance Trade Associations, Insurance Media Publications and All Other Interested
Persons

The purpose of this Informational Letter is to briefly summarize significant insurance legislation enacted during the 2000 regular session of the West Virginia Legislature. This letter is not to be construed as inclusive in all legislation which may affect the insurance industry or insurance consumer, nor should it be construed as a comprehensive explanation of the bills address. Rather, it is intended to highlight the more important bills.

Persons seeking a copy of particular legislation should contact the West Virginia Legislature, Senate Clerk's Office at (304) 357-7800, or House Clerk's Office at (304) 340-3200, Main Unit, State Capitol, Charleston, West Virginia 25305.

S.B. 167 - Patients' Access to Eye Care Act

All individual and group health benefit policies issued for delivery or renewed in this State after January 1, 2001, that include eye care benefits are required to provide each covered person diagnosed with diabetes direct access to an eye care provider for one annual diabetic retinal examination. The eye care provider is to provide no other services to the covered person without the prior authorization of the insurer. When the diabetic retinal examination reveals the beginning stages of an abnormal condition, access to future examinations are subject to prior authorization from a primary care physician.

This bill becomes effective **June 7, 2000**.

S.B. 232 - Authorization to Promulgate Legislative Rules

This bill authorizes the promulgation of the following legislative rules: Medicare Supplement Insurance, 114 CSR 24; Continuing Education for Insurance Agents, 114 CSR 42; and Quality Assurance Standards for Prepaid Limited Health Service Organizations, 114 CSR 56.

This bill became effective from passage on **March 11, 2000**.

S.B. 428 - Examination of Insurers, Agents, Brokers or Solicitors

The Insurance Commissioner is given authority to retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners for the purpose of examining the activities, operations, financial conditions and affairs of persons or companies transacting insurance business in West Virginia. The cost of the examination is to be borne by the company or person which is subject of the examination, or, in the Commissioner's discretion, the cost of the examination can be paid from the "Commissioner's Examination Revolving Fund."

This bill becomes effective **July 1, 2000**.

S.B. 516 - Colorectal Cancer Examinations and Laboratory Testing

This bill mandates the Public Employees Insurance Agency, and all individual and group accident and sickness carriers, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations to reimburse and indemnify for colorectal cancer examinations, laboratory testing and x-ray services to any nonsymptomatic person fifty years of age or older, or a symptomatic person under the age of fifty. The tests covered are: an annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years, and a double contrast barium enema repeated every five years.

This bill becomes effective **June 9, 2000**.

H.B. 4084 - Emergency Services

This bill eliminates the sunset provision for the prudent layperson standard when providing insurance coverage for emergency medical services.

This bill becomes effective **June 7, 2000**.

H.B. 4153 - Motor Vehicle Cosmetic Damage

This is a division of motor vehicles bill which changes the options available to automobile insurers where a vehicle has been determined to be a total loss as a result of cosmetic damage only. Prior to passage of this bill, insurers were required to take possession of title to a vehicle which had been adjusted as a total loss, surrender it to the division of motor vehicles within ten (10) days and receive a salvage certificate from the division of motor vehicles thereafter. The insured was not permitted by law to retain possession of the vehicle.

However, upon the effective date of the bill, in a total loss situation, insurers must determine if the vehicle is repairable, cosmetically damaged or nonrepairable and surrender the title to the division of motor vehicles within ten (10) days. If the insurer determines that the vehicle is repairable, a salvage certificate will be issued. If the insurer determines that the damage is exclusively cosmetic and that no repair is necessary in order to safely and legally operate the vehicle, a title branded cosmetic total loss will be issued in lieu of a salvage certificate. The insured is now permitted to retain possession of their vehicle if the total loss results from cosmetic damage only.

Although the National Automobile Dealers Association (NADA) Official Used Car Guide was required by the division of motor vehicles for determining the value and total loss of an automobile, this bill permits the use of a nationally accepted used car value guide.

This bill becomes effective **June 9, 2000**.

H.B. 4303 - Premium Tax Credits

Credits against premium taxes for investments in West Virginia securities are now limited to smaller insurance companies that meet all of the following requirements: employing less than twenty full-time employees, having net written premiums of less than ten million dollars, and providing a minimum of fifty percent of its net written premiums to under-served high-risk areas of the state. The types of investments for which credit is allowed are limited to real estate, state bonds or interest-bearing notes or obligations, or county, school district, municipality or other political subdivision's bonds, interest-bearing notes or obligations.

This bill became effective from passage on **March 18, 2000**, thus applying retroactively to the portion of the calendar year 2000 prior to the effective date.

H.B. 4354 - Personal Income Tax Deduction for Long-Term Care Insurance

For taxable years beginning on or after January 1, 2000, any payment for premiums for a long-term care insurance policy that offers coverage to either the taxpayer, the taxpayer's spouse, parent or dependent may be deducted from the federal adjusted gross income reported on the taxpayer's state income tax return. The deduction may not be used, however, to the extent the premium cost has been allowed as a deduction in arriving at the taxpayer's federal adjusted gross income.

This bill becomes effective **June 9, 2000**.

H.B. 4479 - Provisional License for Insurance Agents

This bill allows the Commissioner to issue a resident agent's license on a provisional basis to applicants who have met all the requirements for an agent's license, but who have not yet been appointed by an insurer. Provisional licensees may not transact insurance or conduct an insurance business, and insurers must still conduct a suitability investigation before appointing an agent. The provisional license may be upgraded to a full agent's license when the licensee receives an appointment from a licensed insurer. There is no fee for the provisional license, but the usual fees apply for adding company appointments to the license.

This bill became effective from passage on **March 8, 2000**.

H.B. 4499 - Warranties

This bill provides that warranties, service contracts and maintenance agreements, as defined by the bill, do not constitute insurance contracts and are not subject to regulation by the West Virginia Insurance Commission.

This bill becomes effective **June 6, 2000**.

H.B. 4500 - Port of Entry

Upon the effective date of this bill, insurers owned or financially controlled by a government or government agencies or subdivisions are no longer prohibited from obtaining authorization to transact insurance in West Virginia. The bill establishes regulatory requirements for non-U.S. insurers who desire to transact business in the United States by establishing a U.S. branch in West Virginia.

In order to establish a U.S. branch in West Virginia, the branch must qualify as an insurer, establish a trust account with a United States bank in an amount at least equal to the minimum capital and surplus or authorized control level risk based capital, whichever is greater, submit its charter and bylaws together with a statement of its financial conditions as of the close of its latest fiscal year and submit to an examination of the insurer's affairs at its principal office within the United States. The U.S. branch located

in West Virginia will be required to file with the West Virginia Insurance Commissioner and the NAIC, annual and quarterly statements of business transacted in the United States and a statement of trusteed surplus. Both must be verified by the U.S. branch.

An insurer cannot qualify as a U.S. branch in West Virginia if it is engaged in any other kind of business anywhere in the United States, and will only be authorized to transact the kind of insurance permissible for domestic insurers. If the U.S. branch does not substantially comply with the requirements set forth in the bill, its authorization to transact insurance will be withdrawn

This bill becomes effective **June 5, 2000.**

H.B. 4502 - Farmers' Mutual Fire Insurance Companies

This bill allows domestic farmers' mutual fire insurance companies to insure property located outside of West Virginia. Any insurer wishing to do so must maintain a surplus of at least two million dollars or any greater amount required by the Commissioner.

This bill becomes effective **June 5, 2000.**

H.B. 4523 - Non-allowable Assets

Receivables due from affiliates are expressly excluded from assets in determining the financial condition of an insurer, unless the receivables are already in transit and under the control of the insurer.

This bill becomes effective **June 5, 2000.**

H.B. 4650 - Automobile Policies / Homeowners Policies

An insurer can issue a notice of cancellation if the insured or any other operator commits three or more moving traffic violations within a twelve month period, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles. Notice of the cancellation is required to be mailed to the named insured either during the current policy period or during the first full policy period following the date the third moving traffic violation is recorded by the division of motor vehicles. The insurer can cancel under these circumstances regardless of whether the insurer renewed the policy without the knowledge of the violations.

An insurer may nonrenew an automobile liability or physical damage insurance policy if the insured or any other operator commits two or more moving traffic violations within a twelve month period, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles. Notice of the nonrenewal is required to be mailed to the named insured either during the current policy period or during the first full policy period following the date the second moving traffic violation is recorded by the division of motor vehicles. The

insurer can nonrenew under these circumstances regardless of whether the insurer renewed the policy without the knowledge of the violations.

The transfer of an insured between insurance companies within the same group cannot be considered a cancellation or nonrenewal of an automobile liability policy if based upon valid underwriting reasons involving a substantially increased risk associated with the policy.

Finally, this bill provides that an insurer cannot decline to issue or terminate a policy of property insurance or decline an application for private passenger automobile liability insurance based solely upon an adverse credit report or adverse credit scoring.

This bill becomes effective **June 9, 2000.**

H.B. 4705 - Continuing Education for Insurance Agents

This bill changes the reporting period for agent continuing education from two years to three years, starting with the reporting period beginning July 1, 2000. Programs developed by the Board of Insurance Agent Education may not require more than twenty-four hours of continuing education in any triennium (three-year period). Agents of licensed HMOs must complete at least six of their required hours on topics related to HMOs.

This bill becomes effective **June 7, 2000.**

H.B. 4742 - Repurchase Agreements

This bill adds repurchase agreements to the list of allowable classes of investments for hospital service corporations, medical service corporations, dental service corporations and health service corporations.

This bill became effective from passage on **March 8, 2000.**

H.B. 4776 - Uniform Health Care Administration Act

This bill transfers the responsibility to develop standard forms and procedures regarding health care claims from the Insurance Commissioner to the Health Care Authority.

This bill becomes effective **June 8, 2000.**